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Poverty Law
Golden Gate University School of Law

*Local Control Funding Formula: A continuum of discrimination against minority youth
in education*

Introduction

The issue of public school education funding is at the core of the inequalities between schools located in wealthy school districts and those in low-income school districts. Every state struggles to remedy inequitable funding, partly due to long histories of segregation and racism. Nevertheless, many states continue to believe that allowing localities to manage school funding will remedy the problems, but many localities fail to effectively and fairly manage funds.

Part I discusses the background and legal history of public school education funding in California.

Part II describes the recent law passed in California, the Local Control Funding Formula (LCFF) and the Local Control Accountability Plan (LCAP). The LCFF, implemented in 2013, is California's current method of funding public schools. The LCFF grants discretionary power to local control, which are the school districts and the county offices of education.

Part III examines the problems that arise when the government allows local control of school funding. The LCFF is intended to take great measures to remedy California's broken system, but the major flaw lies within the discretionary power granted to localities.

Lastly, in Part IV, I recommend potential means of better implementation. My recommendations focus on limiting the discretion given to local control in order to ensure that school districts are being fiscally responsible and not funding unnecessary programs at the expense of poor students.

I. Background & Context

State legislatures have struggled to create a formula for public education funding that does not leave poor students underfunded and wealthier students overfunded. A disproportionate funding method not only creates a gap between rich and poor, but also widens the achievement gap between white and minority students. The typical outcome is that schools located in lower income communities receive significantly less funding than schools located in wealthier communities.

The issue of public education funding has plagued the nation since the Supreme Court decided that education funding is a state issue. In 1973, a class action lawsuit was brought on behalf of parents and students residing in a poor school district in Texas. Respondents alleged that the state's system of funding schools based on local property taxes denies equal protection to students in poor districts.¹ However, the Court reasoned that education is not a fundamental right under the federal Constitution. Education is not mentioned in the Constitution; thus, there is no explicit or implicit constitutional guaranteed protection.² As a result, state fiscal decisions were found to be beyond court review, unless the decision lacked a rational basis.³

¹ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 2 (1973).

² *Id.*

³ *Id.*

California's constitution, like other state constitutions, explicitly grants residents the right to an education. Thus, California's Supreme Court, two years prior to the *Rodriguez* decision, found that education is a fundamental [state] interest and that funding practices based on local property taxes "invidiously discriminate against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."⁴

Despite the victory of *Serrano*, California's legislature still struggles to reconcile the issue of improving low-performing schools and maintaining high-performing schools. For nearly 40 years following *Serrano*, the legislature established funding based on revenue limits. The revenue limit system placed a cap on district's spending and property tax rates. However, the revenue limit meant to distribute funding equitably failed to do so. The revenue limit system based the amount of funding by the number of students in a district. The system also included excess taxes, such as property tax value. Therefore, the difference between funding per pupil varied significantly. For example, in 2005-2006 school year the revenue limit funding between California's highest and lowest funded districts was \$26,510 per student.⁵

Recognizing the inequalities in education funding, California recently passed a new law to guide the education funding process. In 2013, Governor Brown signed

⁴ *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971).

⁵ Margaret Weston, Funding California Schools, The Revenue Limit System, Pub. Policy Inst. of Cal., Mar., 2010, http://www.ppic.org/content/pubs/reports/R_310MWR.pdf.

into law the Local Control Funding Formula (LCFF),⁶ and the Local Funding Accountability Plan (LCAP).⁷ The LCFF has made four major changes to the way in which school funding will be allocated. First, the districts receive a base grant. Second, the state will provide extra funds to school districts based on the number of high need students. High need students include low-income students, English Language Learners (ELL), and foster youth. Third, the LCFF gives majority of control and power to the local school districts. Lastly, the LCFF calls for strong community involvement.

The new law emphasizes local accountability and funding equity. The underlying idea is that the local districts best understand the needs of their students and communities. Thus, the local districts will have majority control over how funds are allotted to the schools. This requires the districts to effectively manage the funds. Ideally it also establishes a trust that localities will not abuse its discretion.

II. What are the LCFF and the LCAP?

The legislature and many school districts appear to be very excited about the LCFF. The LCFF presents promises of curing the inequalities in education funding and closing the achievement gap between minority students and white students. The LCFF by itself does not create new sources of revenue. The districts will get no less than what they received under the former funding system. Governor Brown and

⁶ Cal. Educ. Code § 42238.02

⁷ 5 CCR § 15496

the state's Department of Finance predict that it will take about eight years for full funding to phase in.⁸

There are three components to the funding formula. As mentioned earlier, each district will receive a base grant. Furthermore, the districts will receive supplemental and concentration grants. Under the supplemental grant component, each district will receive an additional 20 percent per-student base grant for low-income, English Language Learner, homeless and foster youth. Although some students have overlap in the categories above, each student may only be counted once, i.e. unduplicated students. A district in which high-need students make up 55 percent or more of enrollment will qualify for additional "concentrated" grants. The purpose of the concentrated grants is to address research findings that have shown that students face more academic challenges if they attend schools in which their peers are also poor and struggling to learn English.⁹

The LCAP allows districts to create a plan to address the needs of its students. The LCAP is designed so that school districts may identify annual goals, specific action geared toward implementing those goals, and must measure progress for student subgroups across multiple performance indicators based on eight priorities set by the State. The priorities must align with the district's spending plan. Before the annual district budget can be adopted, the LCAP must be approved by the county's office.¹⁰

⁸ *Local Control Funding Formula Overview* (Mar. 4, 2016), <http://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>.

⁹ *LCFF Guide* (Feb. 2016), edusource.org/2016/local-control-funding-formula-guide-lcff/89272#.

¹⁰ *Id.*

Under the LCAP there are eight state priority areas in which school districts may establish goals. The school district does not have to focus on all eight areas, but has flexibility to choose the area(s) that need the most focus within the district. As part of developing LCAPs, parent and community involvement are expected.¹¹ The eight state priorities are as follows: (1) providing students with credentialed teachers, instructional materials, and safe facilities; (2) implementation of California's academic standard; (3) parent involvement and participation; (4) improving student achievement and outcomes along multiple measures; (5) supporting student engagement; (6) school climate; (7) ensuring all students have access to classes that prepare them for college and careers; and (8) measuring other important student outcomes.¹²

III. Does local control of funding meet the intent of the court in *Serrano v. Priest*?

The intent of the California Supreme Court ruling in *Serrano v. Priest* was to put an end to discrimination against the poor.¹³ The passing of the LCFF, nearly four decades later, is in an effort to end discrimination and to create equitable funding in public schools. The formula continues to include an element of property taxes. However, the purpose of the LCFF is to provide schools with high-needs students the additional support and resources necessary to close the achievement gap. Therefore, the new law itself is intended to equitably fund schools such that low-

¹¹ *LCFF Guide* (Feb. 2016), <http://edsources.org/2016/local-control-funding-formula-guide-lcff/89272>.

¹² *Id.*

¹³ 5 Cal. 3d 584 (1971)

performing schools will receive the additional funding necessary to improve and high performing schools will continue to thrive.

Some argue that local control is justified because it stems from concepts of federalism. There is a notion that “local communities are in the best position to understand the educational needs of their children and local control allows schools to respond to the diverse conditions they face in their districts.”¹⁴ However, there are some localities with such diverse conditions that it is very difficult for localities to become adept fiscally or managerially.¹⁵ Furthermore, blatant racial inequalities tend to manifest at the local levels. There is a long history of local governments denying minority students access to education, to then providing them with much inferior opportunities to education. Thus, the virtues of local control may always carry institutional racism whether or not it is intentional.¹⁶

While California’s initiative is commendable, the LCFF does not exist without its flaws. The major issue at hand is the nearly unfettered discretion and control given to localities. It may be true that local school districts can best identify and understand the needs of its schools, but this understanding does not qualify localities to manage hundreds of millions of dollars each year. The mismanagement of funds only furthers discrimination against low-income students, who are mostly minority students, thus, widening the achievement gap. One of the main focuses of the LCFF is to close the achievement gap by ensuring that English Language

¹⁴ Nicole L. Mace, *Local Control and Funding of Schools: A Critical Analysis*, 10 J. L. Soc’y 43, 44 (2008).

¹⁵ *Id.*

¹⁶ *Id.*

Learners, low-income and foster youth are receiving the necessary resources to improve their overall performance.

However, the mismanagement of funds will occur because the localities have too much discretion on how to allocate funds under the LCFF. The language in the statute broadly states that the state board regulation shall “require a school district, county office of education... *increase or improve* services for unduplicated pupils *in proportion* to the increase in funds.”¹⁷ Here, the idea is that school districts will develop LCAPs to serve the needs of their low-income, ELL, and foster youth students. This portion of the statute is defining the goal of accomplishing equitable funding. However, the language if not carefully interpreted gives localities unrestrained discretion over what it means to “increase or improve” services “in proportion” for these students. Thus far the state regulations do not require a list itemizing the supplemental and concentration expenditures.

Moreover, each district, charter school, and county office of education must calculate the amount and percentage of annual increase based on a complicated seven-step formula.¹⁸ The districts must (1) determine the district’s target supplemental and concentration grant funding; (2) determine prior year expenditures to support unduplicated pupils; (3) calculate the gap between prior year expenditures and target supplemental and concentration grant funding; (4) calculate the increase in estimated supplemental and concentration grant funding in the LCAP year; (5) calculate district’s total estimated supplemental and

¹⁷ Cal. Educ. Code § 42238.07.

¹⁸ *LCFF Guide* (Feb. 2016), <http://edsources.org/2016/local-control-funding-formula-guide-lcff/89272>.

concentration grant funding in the LCAP year; (6) calculate the district's base funding in the LCAP year; and (7) calculate the minimum proportionality percentage.¹⁹

The complexity of the formula creates opportunities for school districts to inaccurately calculate the amount of funding necessary for its annual increase. Unfortunately, this issue has already reared its ugly head. In 2015, civil rights advocates filed a lawsuit against the Los Angeles Unified School District (LAUSD), California's largest unified school district, alleging that the district is underfunding English Language Learners, low-income students, and foster youth by hundreds of millions of dollars.²⁰ The civil rights attorneys from the Public Advocates Inc. and the American Civil Liberties Union (ACLU) seek to have an injunction against the Los Angeles County Office of Education to prevent approval of the LAUSD's LCAP. The school district is defending its actions on the grounds that the legislation has "clearly granted school districts the highest degree of flexibility in determining student program needs."²¹ The allegations suggest that based on the annual calculations tied to increases in funding LAUSD will underspend by a combined 414 million dollars on high-need students.²²

The lawsuit against the LAUSD is the first since the implementation of the LCFF. This lawsuit sheds light on the issue of localities controlling education funding. This problem of underfunding poor students in LAUSD occurred within the

¹⁹ *Id.*

²⁰ John Fensterwald, *Suit Claims LA Unified underfunding low-income kids, English learners*, EdSource (July 1, 2015), <http://edsource.org/2015/suit-claims-la-unified-underfunding-low-income-kids-english-learners/82377>.

²¹ *Id.*

²² *Id.*

first year of the LCFF's implementation. The formula is complex, thus, local school districts may need more time to fully grasp what is required of them. However, waiting for local leaders to catch-up will only continue to underserve California's high needs students. The outcome of this lawsuit is suspected to have statewide implications. However, as the lawsuit is in its early stages, it is difficult to predict how the court will decide. The petitioners' prayer for relief does not ask that the schools districts lose control over funding, but the ripple effects will probably have the legislature considering more stringent terms to manage how funds are being distributed.²³

IV. Recommendations

Currently, the state's plan to ensure that the school districts are meeting expectation is to create a rubric by which the districts can measure their own progress. The county office of education is responsible for reviewing the districts' LCAPs and the State Superintendent is responsible for reviewing the county's LCAPS. The State Superintendent may intervene if a school district fails to show improvements for three out of four consecutive years. Needless to say, these provisions are not enough to ensure that the counties and school districts are effectively and fairly administering funds especially for programs to improve low-income, ELL, and foster youth performance.

It is not an evil that school districts have some discretion in funding allocation. A school district is usually in a better position to point out its highest

²³http://www.publicadvocates.org/sites/default/files/library/community_coalition_of_south_los_angeles_and_reyna_frias_v.lausd_et_al.pdf (This is a direct link to the Petition for Writ of Mandate located on the Public Advocate's website).

need areas. However, there may need to be a hybrid between state and local control. The school district's LCAPs have to be approved by the county office of education before the annual increase in funding is approved by the state board. However, taking LAUSD for example, there is still a need for another level of review to ensure that the districts are not abusing their authority. The state continues to have a responsibility to ensure that the funds are being appropriated not only equitably but adequately as well. The state still has a duty to its constituents that all student needs are being met. If all students are succeeding then California as a whole will also succeed.

Thus, the State Board of Education should hold annual reviews of the school districts LCAPs and determine whether funding calculations are accurate. While it is great that the districts have a rubric to measure themselves against, the state still has a responsibility to ensure that the districts are meeting the expectation. Thus, the state's investment simply cannot be to give the school districts more money and leave the implementation to local control. The state should hold annual reviews of the school districts' LCAPs and of their implementation. In essence, the state should create another tier to the review levels. The county office will continue to review the school districts LCAPs, but then there will be an annual review at the state level. The additional tier will serve to detect any abuse of discretionary power and protect the school districts from frivolous spending of funds.

The state will face more costs to implement an additional tier of review. It will require an increase in resources, time, and personnel. However, the long-term benefits greatly outweigh the costs.

V. Conclusion

The point of the LCFF is to bring an end to funding inequalities, improve the performance of struggling schools, and provide the necessary tools to help poor students succeed. Thus, if the LCFF and LCAP are not being implemented effectively and fairly, its purpose will dissipate.